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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,267	04/22/2005	Pierre Nicolas	112701-600	1492
29157 7590 12/18/2008 BELL, BOYD & LLOYD LLP P.O. Box 1135 CHICAGO, IL 60690				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

# Office Action Summary

## Application No.

10/532,267

## Applicant(s)

NICOLAS ET AL.

## Examiner

Lien T. Tran

## Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 3-9, 12-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9, 12-17, 19-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is vague and indefinite. The preamble recite " use of thermostable alpha amylase", not a process of using. Thus, it is not clear what intended by the limitation of " comprising the step". If applicant intends to claim a method of use, it is suggested applicant use the language " A method of using thermostable alpha amylase.... ".

Claims 14-15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use is not a proper definition of a process claim. If applicant intends to claim a method of use, it is suggested applicant use the language " A method of using thermostable alpha amylase.... ".

Claims 1, 3-4, 6-9, 13-17, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone.

Stone discloses flour-based food products comprising a thermostable alpha amylase. The products include biscuits, crackers or cake. The enzyme is obtained from bacterial sources and has strong starch liquefying and dextrinizing power, alpha amylase activity. The enzymes are stable up to temperatures of 80-90 degree C. Example 1 shows flour-based product containing yeast which is a gas generating organism. The enzyme has activity of 200 units per gram. The process comprises the steps of mixing flour, water and thermostable alpha amylase and baking on hot surface such as a pan in an oven as shown in example 1. ( see also col. 1 and col. 4 line 15)

Stone does not disclose wafer.

Stone discloses baked products including ones made from batter such as cake, doughnuts, muffins. It would have been obvious to one skilled in the art to make wafer and obtain the benefit taught by Stone. Stone teaches adding thermostable alpha amylase with other ingredients including flour, sugar, salt, water etc.. ; thus, Stone teaches adding the amylase to the batter when a batter is made.

Claims 5, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone in view of Rey et al.

Rey et al in a method of preparing dough teaches that enzymes such as proteases, hemicellulases are known dough conditioners and dough improving agents. ( see col. 1 lines 35-41)

It would have been obvious to one skilled in the art to add protease and/or hemicellulase such as xylanase because these additives are well-known dough improvers as shown by Rey et al. Adding additives for their art-recognized function would have been obvious to one skilled in the art.

The rejection 112 and 101 rejection of claims 14-15 are maintained for the reason set forth above. The amendment does not correct the problem.

The 102 rejection of the claims over Stone is withdrawn due to the amendment limiting the product to wafer.

In the response filed 9/25/08, applicant comments that all the claims are amended to recite the limitation of a " wafer" product which defines over Stone. The feature of the product being a wafer was claimed previously and was addressed in the

103 rejection in the previous office action. Applicant argues Stone teaches away from the claimed subject matter because the specification explicitly states that the present invention is not at all related to anti-staling". Stone teaches the same enzyme in bakery product; thus, it cannot be said that Stone teaches away from the claimed product and method. It is not necessary to show using the ingredient for the same purpose as applicant. Since Stone teaches the same enzyme, it is inherent the enzyme will have other functions including the ones disclosed by applicant. Furthermore, the claims do not have any limitation of the function of the alpha amylase. The claims require the food product to containing the alpha amylase and the process to contain the step of adding the alpha amylase. Both of these feature are taught in the Stone product and process. Applicant argues that Stone teaches inhibition or prevention of the staling of bread. Stone teaches other products besides bread, including products made from batter such as cake, doughnut and muffins. Stone also discloses that the anti-staling process is also applicable to cakes and other bakery products. Thus, it would have been obvious to one skilled in the art to use the enzyme in wafer because it is a bakery product and it is made of some of the same ingredients as other bakery product. Wafer contains flour which contains starch; thus, it will benefit from the anti-staling effect of the enzyme as other bakery products. Applicant states that in baked wafer, the water mobility is not sufficient to cause retrogradation; this statement is not supported by factual evidence.

Applicant's arguments filed 9/25/08 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 15, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794